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GAF CORPORATION, a Delaware
Corporation,

Plaintiff,

v.

HARTFORD ACCIDENT &
INDEMNITY COMPANY, a
Connecticut corporation;
INSURANCE COMPANY OF
NORTH AMERICA, a
Pennsylvania corporation;
INDEMNITY INSURANCE
COMPANY OF NORTH AMERICA,
a New York corporation;
GREAT AMERICAN
INSURANCE COMPANY, a
New York corporation;
AMERICAN MUTUAL
LIABILITY INSURANCE
COMPANY, Massachusetts
corporation; CHUBB
INDEMNITY INSURANCE
COMPANY, a New York
corporation; COMMERCIAL
UNION INSURANCE COMPANY
OF NEW YORK, a New York
corporation; NORTHBROOK
INSURANCE COMPANY, an
Illinois corporation;
ZURICH GENERAL ACCIDENT
AND LIABILITY INSURANCE COMPANY,
a Swiss corporation; TRENWICK
REINSURANCE COMPANY, LTD., a Bermuda
corporation; and CERTAIN
UNDERWRITERS AT LLOYD'S LONDON
AND LONDON MARKET
COMPANIES,

Defendants.

46
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No.:
95-1150 (AMW)

CASE MANAGEMENT ORDER
NUMBER 1

FILED
OCT 03 1995
At 8:30M
WILLIAM T. WALSH
CLERK
ENTERED
on
THE DOCKET
on 10-4-95 19.55
By WILLIAM T. WALSH, CLERK
(Deputy Clerk)

CASE MANAGEMENT ORDER NUMBER I

In light of the complexity of issues and number of parties involved, the Court finds that special case management procedures will promote efficient resolution of this case. After consideration of the proposals of the parties, as well as the interests of justice, the Court hereby enters this Case Management Order Number I ("Order").

I. GENERAL MATTERS

A. Privilege

1. Communications in connection with this case between and among counsel for defendants and/or their clients and their agents, including the exchange of documents and information, shall not constitute a waiver of any pre-existing privilege, including but not limited to, the attorney-client privilege and work-product privilege, if and to the same extent such communications would be subject to said privileges if they had taken place within or between one law firm and one client represented by that firm.

2. Cooperative efforts between and among counsel for defendants and/or their clients are for the purposes of reducing unnecessary duplication and expense and litigating this case in an organized fashion. Such efforts shall not be deemed to constitute or be evidence of a conspiracy, concerted action, or any other wrongful conduct. Evidence of such efforts shall not be discoverable and shall not be communicated to the trier of fact in this or any other action.

3. Communications between and among counsel for defendants and/or their clients, and experts or consultants in this case shall not be deemed a waiver of such privileges and immunities as may otherwise exist as to communications between experts or consultants and one firm. It is expressly understood that communications by plaintiff's counsel to their respective clients and communications by defendants' counsel to their respective clients in this

case have been, are and will be treated as confidential, privileged communications, and as such, are not discoverable.

4. If a defendant withdraws from any cooperative litigation efforts, prior communications between that defendant and other defendants and work product shared by or with the departing defendant will not be deemed to have lost the protection of the attorney-client, work-product, or other applicable privilege.

B. Protective Order

Within thirty (30) days of the date of entry of this Order, the parties shall submit an agreed Protective Order providing for the confidential treatment of certain documents, testimony, and information exchanged during the course of this litigation, or the parties shall simultaneously move this Court for the entry of a Protective Order in a form acceptable to the respective moving parties.

C. Additional Parties

Any parties joined to this action after the date of entry of this Order shall be served by the joining party with a copy of this Order and all case management orders entered in the future. All such joined parties are bound by the provisions and terms of all case management orders entered herein unless the Court orders otherwise following application to the Court by said party filed and served within fifteen (15) days of receipt of said case management order or orders.

D. Additional Sites

1. Prior to the next scheduled case management conference in this matter, but no later than December 31, 1995, Plaintiff shall be permitted to amend the Complaint herein to add any additional site(s) for which it seeks insurance coverage in connection with an underlying claim, or claims, or any additional policies, without need to file a motion for leave, and plaintiff

shall file and serve, in accordance with Section IV.C. hereof, an amendment to the Complaint setting forth only those allegations pertinent to the additional site(s) or policies.

2. If plaintiff amends the Complaint in accordance with paragraph I.D.1. above, defendants shall not be required to serve responsive pleadings, and all allegations relating to such additional sites shall be deemed denied by defendants, and all affirmative defenses in defendants' answers to the Complaint herein shall be deemed to apply. However, nothing in this paragraph shall prevent any defendant from serving a responsive pleading.

II. PRELIMINARY EXCHANGE OF INFORMATION

A. Policy Information

1. Within thirty (30) days of the date of entry of this Order, plaintiff shall a) identify all alleged policies which remain at issue in this action; and b) produce copies of all such alleged policies within its possession, custody or control. Plaintiff shall also provide a list of such alleged policies of which it cannot locate a copy, and with respect to such alleged policies, plaintiff shall provide all non-privileged documents relating to GAF or its subsidiaries which refer in any way to the existence, terms and conditions of such alleged policies ("secondary documents").

2. Within thirty (30) days of the date of entry of this Order, each defendant shall provide copies of each policy and parts of policies, if any, within their possession, custody or control, issued or subscribed to by that defendant and identified in Exhibit B of the Complaint. As to those policies alleged and identified in Exhibit B of the Complaint as having been issued or subscribed to by that defendant, of which defendant cannot locate a copy, each defendant shall provide all secondary documents contained within defendant's underwriting files relating to GAF.

3. Within thirty (30) days after receipt of the information described in paragraph 1 above, each defendant shall provide any further secondary documents within its possession, custody or control with respect to policies identified by plaintiff in accordance with paragraph 2, of which defendant cannot locate a copy.

4. Within forty-five (45) days of the date of entry of this Order, plaintiff shall identify all general liability, casualty and indemnity policies allegedly issued to plaintiff, its predecessors, subsidiaries or assigns, including all primary, umbrella, excess and captive insurance arrangements and self-insured retentions, for the time periods in which the underlying claims are brought. Plaintiff shall state whether any of the policies identified in this paragraph have been settled or compromised. Plaintiff shall also provide a sworn statement by a duly authorized corporate designee stating that plaintiff has no Environmental liability or Pollution liability coverage.

5. To facilitate the efficient exchange of policies:

(a) Plaintiff shall serve a copy of the policies identified in paragraph II.A.1. above, any list of unavailable alleged policies and secondary documents upon the law firm of Siff Rosen P.C., which shall receive such policies, list and secondary documents, if any, on behalf of the defendants. The set of policies served upon Siff Rosen P.C. shall be organized alphabetically by defendant and, as to each defendant, chronologically by policy period. Plaintiff shall also serve one copy of such alleged policies, any listing of each defendant's unavailable policies, and secondary documents upon counsel for that defendant.

(b) Each defendant shall serve a copy of each of the policies issued by that defendant and identified in paragraph II.A.2. above, any list of unavailable alleged policies and secondary documents upon the law firm of Pitney, Hardin, Kipp & Szuch ("Pitney, Hardin"), counsel for plaintiff. The set of policies served by each defendant upon Pitney,

Hardin shall be organized chronologically by policy period. Each defendant also shall provide a copy of such policies issued by that defendant and identified in paragraph II.A.2, any list of that defendant's unavailable alleged policies and secondary documents to Siff Rosen P.C.

6. In the event any additional alleged policy or policies are placed at issue in this litigation, either through the amendment of any pleading or the filing of any additional pleading, within forty-five (45) days of such amendment or filing, plaintiff and the defendant whose alleged policy has been added shall exchange copies of the additional policies, if any, and/or list of unavailable alleged policies and secondary documents, if any, as set forth in paragraphs 1 to 5 above.

7. The producing parties shall number each page of every document according to a numbering system to be agreed upon by the parties. The documents so numbered shall include any file markers, folders, covers, binders, tabs, etc. used to separate, store, identify, etc. the documents in the ordinary course of business. The numbers will serve to identify the documents throughout the litigation.

8. Within ninety (90) days of the date of entry of this Order, each defendant, except for the London Market Insurers, shall serve upon plaintiff a non-binding statement stating whether or not each policy produced by plaintiff is authentic to the best of that defendant's then current knowledge. If a defendant states that the policy produced by plaintiff is not authentic, or that it cannot determine whether the policy produced by plaintiff is not authentic, said defendant shall include in its non-binding statement the factual basis for such assertions.

9. Within ninety (90) days of the date of entry of this Order, counsel for plaintiff and counsel for the London Market Insurers shall confer in good faith to establish a framework and schedule for resolving any discrepancies and disputes concerning the authenticity of the London policies.

10. All parties shall be under a continuing obligation to supplement their production of policies at issue should such policies or any part thereof be located after the deadlines set forth in paragraphs II.A.1 through 7 of this Order.

11. Compliance with paragraphs II.A.1 through 10 above shall not constitute a waiver of any objection that any party may have to the production of any other document, nor shall it preclude a party from contending that subsequently discovered information or documents affect the contents of any policy; or alleged policy; nor shall it constitute an admission or be used as evidence that any policy provides or may provide coverage for any of the claims alleged in plaintiff's Complaint, and amendments thereto, or in any other action.

12. The parties are strongly encouraged to enter into stipulations concerning the authenticity of the insurance policies in issue herein. Accordingly, within sixty (60) days of the exchange of policies and secondary documents counsel shall confer in good faith to identify and resolve any discrepancies and disputes concerning the authenticity of all policies at issue herein.

13. In the event that counsel are unable to reach an agreement or stipulation with respect to the alleged policies, the parties' counsel shall advise the Court of any disputes regarding the existence or authenticity of the alleged policies and the Court shall determine whether summary disposition of some or all of said issues is appropriate, and if so, shall schedule procedures for such adjudication.

B. Basic Claims Information

1. Commencing within sixty (60) days from the date of entry of this Order, and ending no later than one hundred twenty (120) days from the date of entry of this Order, plaintiff shall serve on a rolling basis upon each defendant a description of each of the one

hundred seven (107) sites described in Exhibit A of the Complaint, which shall contain the information set forth below:

(a) the location and a brief physical description of the site, property or facility at or out of which the claim or claims arose ("the site"), including whether the site is owned, non-owned or leased;

(b) the identity of each facility allegedly involved in the claim or claims at, or arising from, each site and a descriptive history of the operations at each site, including, but not limited to, a description of the type of operations and the period of operations at each site. Such descriptive history shall include a description of plaintiff's role and/or involvement at the site, and similar such information as to any predecessor, subsidiary or affiliate, including plaintiff's dates of involvement at each site and similar such information as to any predecessor, subsidiary or affiliate;

(c) a short chronological narrative of any claim against plaintiff or any present or former plaintiff-related entities arising out of environmental contamination at each site, including the identity of the claimant, the nature and background of the claim, the date any claim against plaintiff was made, the date or dates of all contaminating activities alleged by the claimant, and a description of the damage or injury alleged;

(d) the identity of each known insurer alleged to have provided coverage for each of plaintiff's claims at a particular site, and each known alleged insurance contract which plaintiff contends provides coverage for its alleged liability at each respective site;

(e) the identity of each technical consultant retained by plaintiff, a PRP group of which plaintiff is a member ("PRP group"), and/or counsel for plaintiff or PRP group to provide technical services with respect to each site;

(f) an itemized, detailed accounting of all net recoveries received directly by plaintiff with respect to each site;

(g) a description of the hazardous waste or other hazardous materials, broken down by specific type including, without limitation and where appropriate, the chemical, or trade of each such waste or material allegedly placed into the ground or building at each location by plaintiff or any predecessor, subsidiary or affiliate of plaintiff at each site, as well as identification of each entity or facility from which the material originated. For each such hazardous waste or other hazardous material described, plaintiff shall indicate by facility the date(s) said material was allegedly released, discharged, spilled, dumped, buried or otherwise deposited

(h) plaintiff shall identify separately and with specificity the (1) actual and (2) estimated future costs at each site for which plaintiff seeks coverage including plaintiff's actual or estimated share of future costs. For all actual costs, plaintiff shall specify the amounts paid, the payee, and the reason for each payment to the extent such information is available to plaintiff, for example, whether the payment was for consultant fees, remedial and feasibility study cost, soil remediation costs, groundwater remediation costs, settlements, fines, penalties, monitoring costs and judgements. Where it is unclear from the information provided to defendants whether the referenced items are sought as damages under the alleged policies' indemnity obligations or as damages under the alleged policies' defense obligations, defendants may seek further clarification from plaintiff. The parties may thereafter seek the Court's assistance as is necessary to resolve any unresolved issues pertaining to damages being claimed by plaintiff under the defense or indemnity coverage parts of the policies at issue in this litigation.

(i) plaintiff shall set forth the date of first notice to plaintiff or any predecessor, subsidiary or affiliate of plaintiff of each claim, including, but not limited to, the date of receipt of all complaints, PRP letters, demand letters, administrative notices and other documents initiating any administrative or judicial proceeding received by plaintiff or a predecessor, subsidiary or affiliate of plaintiff relating to such claim;

(j) plaintiff shall identify the governmental authorities which have acted with respect to the site, and a description of all investigatory/remediation efforts taken by or at the the firection of any governmental authorities, including the current status of each claim asserted at each site.

(k) plaintiff shall identify the EPA identification number and/or State identification number, if any for each site.

(l) plaintiff shall promptly update its site summaries as additional significant information becomes available. Significant information shall include, but not be limited to, new claims, judgments, agreements to pay, approvals of remediation activities by an agency overseeing remediation of a site or a modification by more than 10% of plaintiff's allocated share of costs or assignment of a share in costs or \$100,000 which ever is greater.

2. In lieu of providing the information described in paragraph II.B.1. above by written summary, plaintiff may attach specific pages of specific documents produced in accordance with paragraph U.B.5. below if such page(s) provide a clear and concise summary, responsive to paragraph II B 1, and, provided that plaintiff specify exactly which item(s) of information is contained in such designated page(s).

3. Within twenty one (21) days of plaintiff's compliance with paragraph 1 above, defendants shall specify forty (40) sites for which defendants request an initial production of documents. Commencing within sixty (60) days of such request, and ending no later than

ninety (90) days of defendants' request, plaintiff shall serve on a rolling basis copies of the following upon Siff Rosen P.C.:

(a) All complaints, demand letters, administrative notices and other documents in the possession of plaintiff initiating any administrative or judicial proceeding relating to each site;

(b) All dispositive motions, judgments, consent decrees, and administrative orders including, without limitation, administrative records of decision and non-binding allocation in the possession of plaintiff relating to each site;

(c) Copies of all agreements (other than insurance policies at issue in this lawsuit): (1) compromising, resolving, limiting, settling, dismissing or disposing of all or part of any claim; (2) limiting in any manner plaintiff's liability for any claim; (3) indemnifying plaintiff for all or part of its actual or potential costs incurred in connection with any claim; or (4) in which plaintiff agrees to indemnify any other party for all or part of its actual or potential costs incurred in connection with any claim or site.

(d) Copies of all Remedial Investigations, Feasibility Studies, and Record of Decisions relating to each site.

(e) Copies of all responses to all discovery requests directed to plaintiff and responsive pleadings shall be made available to defendants for their inspection and copying at the respective office or locations in which such records are maintained.

4. Within ninety (90) days after entry of this Order, plaintiff, Hartford and Insurance Company of North America ("INA") shall meet in good faith to attempt to arrive at an accurate accounting of all sums expended pursuant to the Joint Defense and Dispute Resolution Agreement at issue in this case. In addition, plaintiff, Hartford and INA shall arrange for the mutual exchange of documents concerning the Joint Defense and Dispute

Resolution Agreement no later than the completion of plaintiff's document production for the forty selected sites pursuant to paragraph 4³ above.

5. All documents produced pursuant to the requirements of this Section II.B. shall be numbered in accordance with the numbering system set forth in paragraph II.A-7. above.

6. If plaintiff amends the Complaint to incorporate additional sites pursuant to Section I.D.1. hereof plaintiff shall, within sixty (60) days of such amendment or Order, provide Basic Claims Information set forth in Section II.B.1. hereof for each such additional site.

C. Document Destruction

No party shall destroy any documents, or other materials that are discoverable under the pertinent discovery rules, relating to any of the policies, claims, parties, or sites involved in this action, or claims of which GAF is aware which could potentially be involved, whether or not such destruction is in accordance with a party's document retention program.

D. Notice Information

Within ninety (90) days of the date of entry of this Order, plaintiff and each defendant shall simultaneously provide to each other a list of the dates on which they claim plaintiff gave notice to that defendant for each site, and shall provide a copy of the notice sent or received.

III. DISCOVERY

A. General Provisions

1. The Court expects the parties to cooperate in all discovery matters to the maximum extent possible. The parties shall agree on procedures to avoid or minimize duplicative discovery.

2. Pending the next case management conference and further order of this Court, discovery shall be limited to the exchange of information set forth herein but such exchange shall not (a) preclude defendants from objecting to the adequacy of the responses called for in paragraph II.B.1. above; (b) preclude plaintiff from supplementing such responses.

3. The parties may move for such further information or documents as they deem necessary to evaluate the sites at issue in this litigation for purposes of evaluating plaintiff's claims; selecting the forty (40) sites for which an initial document production is called for; or proposing test sites pursuant to paragraph (B) below.

B. Site Selection

1. Upon completion of the exchange of information herein, the Court shall set a discovery conference within 45 days to establish a schedule for selection of representative sites for full discovery and for purpose of an initial trial of this matter. Prior to this conference, the parties shall submit proposals selection of representative sites and a discovery schedule.

In selecting the representative sites, the parties shall exchange lists of the selected sites with each other and submit their respective lists to the Court. Plaintiff shall select four (4) representative sites and defendants collectively shall select four (4) representative sites (all 8 being collectively referred to as the "Selected Sites"). Both plaintiff and defendants shall include in their respective selections at least one (1) site located within the State of New Jersey and one (1) site located outside the State of New Jersey. Within fourteen (14) days of exchanging their respective lists of selected sites, the parties may submit to the Court any objections to one or more sites selected by their adversaries.

IV. LIAISON COUNSEL AND MASTER SERVICE LIST

A. Liaison Counsel

For the convenience of the Court and all parties, counsel for the defendants have designated the firm of Siff Rosen P.C. as liaison Counsel for the defendants ("liaison Counsel"). Liaison counsel has no authority to bind other defendants with respect to substantive or procedural issues. The defendants may change liaison Counsel hereunder, and they may designate additional liaison Counsel for separate aspects of or issues in this case. If defendants change or add liaison Counsel, notice shall be given to Pitney, Hardin.

Defendants' Liaison Counsel shall make a reasonable effort to:

1. coordinate the conduct of discovery under the Case Management Order on behalf of the defendants;
2. establish procedures among defendants to inspect and copy, jointly and individually, those documents required by each defendant; and

3. perform such other duties as may be incidental to proper coordination of discovery under this Case Management Order and communication with plaintiff relating to defendants' discovery.

B. Master Service List

As an administrative convenience to the Court and the parties, a Master Service List shall be jointly maintained by the firms of Pitney, Hardin and Siff Rosen P.C. The Master Service list shall include all counsel appearing for every party. Counsel for each party shall notify Pitney, Hardin and Siff Rosen P.C. of any changes necessary to maintain an accurate and current Master Service list. When changes are made, Pitney, Hardin and Siff Rosen P.C. shall serve on all parties and the Court a copy of the revised Master Service list. A current Master Service List is annexed hereto as Exhibit A.

C. Service

Service in this action shall be made upon all counsel on the Master Service list and on Pitney, Hardin and Siff Rosen P.C. in accordance with the Federal Rules, except that motion papers shall be served by personal delivery, electronic means, or overnight delivery service on the party or parties against whom the relief is sought, and all other parties shall be served by first class mail. Answering papers and reply papers shall be similarly served by personal delivery, electronic means, or overnight delivery service upon the moving or responding party or parties.

D. Communications from the Court

1. In the event the Court wishes to communicate with the parties, the Court may communicate with John Siegart of Siff Rosen P.C. who has been designated to

receive communications from the Court on behalf of the defendants and who agrees to advise counsel for the defendants of such communications, and with Robert

G. Rose of Pitney, Hardin, for plaintiff.

2. The Court is aware that the law firms of Siff Rosen P.C. and Pitney, Hardin have assumed this responsibility solely as a convenience to the Court. If through inadvertence these firms fail to provide copies of any order or opinion issued by the Court or otherwise fail to properly advise other counsel, this Court will make whatever adjustments are necessary in order to eliminate any actual or perceived prejudice to any party.

3. The procedures in paragraph IV.D. 1. apply only when the Court wishes to communicate with the parties. Such procedures are not to be used for communications between plaintiff and defendants.

V. MOTIONS AND HEARING

A. The parties shall avoid or minimize duplicative motions, briefs, and discovery. A defendant agreeing with the position and legal argument set forth in the motion of another defendant may either join in the filing requesting relief, or, if that is not practicable, adopt the position and arguments in a separate filing.

B. For purposes of this Order, "Dispositive Motions" shall be deemed to mean motions for summary judgment, partial summary judgment, partial summary adjudication, motions in limine or any other motions, however styled, if the granting of the motion would resolve or dispose of all or a portion of a claim or a defense or would help to establish the necessary legal framework for the resolution of any factual issue which remains to be resolved. It shall not be deemed to include more limited motions in limine such as

those directed to the admissibility in evidence of particular documents or the testimony of specific witnesses.

C. Until this Order is amended or a subsequent Case Management order is entered, no Dispositive Motions shall be filed by any party without leave of the Court.

D. Any applications for Pro hac vice admissions in this matter shall be made by submitting a form of order to the Court, after which counsel for any other party to this action may serve an opposition to such order within five (5) days.

VI. CROSS-CLAIMS AND COUNTERCLAIMS

A. Cross-claims between defendants are reserved pending further order of the Court, and any cross-claims filed to date shall be deemed denied and cross-claim defendants need not serve or file answers thereto. The assertion of cross-claims between defendants pursuant to further Order of the Court shall not delay the trial in this matter.

B. Counterclaims filed by defendants seeking declarations of no coverage shall be deemed denied by plaintiff and plaintiff need not serve or file answers thereto. Counterclaims presenting issues not raised in the Complaint shall be answered by plaintiff within thirty (30) days.

VII. AMENDMENTS

This Case Management Order may be amended or supplemented as deemed appropriate by the Court.

VIII. ALTERNATIVE DISPUTE RESOLUTION

Following plaintiff's initial production of basic claim information pursuant to II B 1 above, but prior to the next scheduled case management conference, the parties, including their principals, shall meet for purposes of discussing the potential for mediation, arbitration or alternative dispute resolution of the claims at issue in this action.

IX. CASE MANAGEMENT CONFERENCE

The Court shall hold a Case Management Conference on February 14, 1996 at 1:00 p.m. to determine the status of proceedings under this Order, and to establish a schedule for entry of a subsequent Case Management Order, as deemed appropriate by the Court. The parties shall submit a status letter to the Court in advance of the next case management conference.

SO ORDERED THIS 3rd day of October 1995.



JOEL A. PISANO
UNITED STATES MAGISTRATE JUDGE